

REMARKS

Claims 1-15 are all the claims pending in the application.

Claim rejections -- 35 U.S.C. § 112

Claim 2 stands rejected under 35 U.S.C. § 112, second paragraph. Applicant has amended claim 2 as suggested by the Examiner, and therefore respectfully requests that the rejection be withdrawn.

Claim rejections -- 35 U.S.C. § 103

Claims 1-15 remain rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Troxel in view of Wang. In the July 3, 2006 Amendment, Applicant argued that neither Troxel nor Wang teach determining the packet marking of each of said packets based on the actual value of the traffic reservation parameter, and that specifically that Troxel only shows upgrading non-conforming packets. In other words, Applicant argued that claim 1 operates in a color blind mode, whereas Troxel operates in a color-aware mode.

In the Final Office Action, the Examiner responds to this argument by asserting that Fig. 9 and Fig. 10 of Troxel allegedly depict a color-blind mode. Specifically, the Examiner asserts that the process whereby the high priority packets use the entire bucket by using the high priority outlet, and the low priority packets use only the contents of the token bucket shown by outlet 64 meets the claim limitation. However, Applicant respectfully disagrees with the Examiner's position.

Figs. 9 and 10 show two different embodiments of Troxel's invention. In the first, high priority packets are evaluated against a high priority outlet 62 of the bucket 60, and low priority packets are evaluated against the contents b1 of the token bucket 60 shown as outlet 64. See col. 16, lines 43-55. If the token bucket does not contain enough tokens for the packet, the packet is marked as non-conforming. See col. 16, lines 56-58. However, Applicant respectfully notes that Troxel does not describe what happens if there are enough tokens in the bucket. Presumably, the packets are assumed to be conforming and are thus passed through without marking.

Fig. 10 shows another different embodiment involving two stages. The first stage is the same as described above with respect to Fig. 9. However, the conforming packets (note that they are unmarked at this time) then are again tested using a second stage token bucket 68. The high priority packets use the high priority outlet and the low priority packets use the low priority outlet. Again, packets that do not meet the requisite high priority or low priority threshold are marked as non-conforming. In this stage, however, packets are subjected to a priority upgrade outlet, which the Examiner agrees is a color-aware mode. (see FOA, page 6, lines 11-12.

Thus, Applicant respectfully submits that Troxel does not teach determining the packet marking of each of the packets based on the actual value of the traffic reservation parameter when the actual value exceeds the threshold value for the traffic reservation parameter, as set forth by claim 1. As described above, the only time the packets are marked are 1) when they are non-conforming, at which point they do not exceed the threshold parameter, or 2) in the second stage where a color-aware mode is used to mark packets depending on the existing color of the packets (i.e., the upgrade process). Thus, Applicant respectfully submits that Troxel does not

teach determining the packet marking of each packet of the packets, as claimed. As admitted by the Examiner, Wang does not teach this feature either. Accordingly, claim 1 is patentable over the Troxel and Wang combination for this reason.

Conclusion and request for interview

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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